

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

Dhir v Minister for Immigration and Multicultural Affairs [2025]

FedCFamC2G 73

File number(s): CAG 23 of 2021

Judgment of: **JUDGE LEISHMAN**

Date of judgment: 31 January 2025

Catchwords: **MIGRATION** – Student (Subclass 500) visa refused – Applicant had given or caused to be given false or misleading information in a material particular in a visa application in the 12 month period before application made – Genuine Temporary Entrant criteria not met – Public Interest Criteria not met – No compelling or compassionate circumstances to allow waiver of public interest criteria – Administrative Appeals Tribunal affirmed delegate’s decision – Judicial review of Tribunal’s decision – Whether Tribunal failed to differentiate between the two limbs of public interest criteria and treated as one criteria – Whether Tribunal applied the wrong test – Whether Tribunal provided adequate reasons for its decision-no jurisdictional error – Application for judicial review dismissed

Legislation: *Migration Act 1958* (Cth) ss 5(1), 65, 474, 476
Federal Circuit and Family Court of Australia (General Federal Law) Rules 2021 (Cth) rr 1.04, 4.06, 7.01
Migration Regulations 1994 (Cth) Sch 2, cl 500.217, 500.212, Sch 4, cl 4020

Cases cited: *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476; [2003] HCA 2
LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (2024) 418 ALR 152; [2024] HCA 12
Trivedi v MIBP [2014] FCAFC 42
Singh v Minister for Border Protection [2018] FCAFC 52

Division: Division 2 General Federal Law

Number of paragraphs: 85

Date of last submission/s:	23 January 2025
Date of hearing:	23 January 2025
Place:	Canberra
Counsel for the Applicant:	Mr Anforth
Solicitor for the Applicant:	NBC Law
Solicitor for the First Respondent:	MinterEllison
Solicitor for the Second Respondent:	Submitting appearance, save as to costs

ORDERS

CAG 23 of 2021

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: **GOURAV DHIR**
 Applicant

AND: **MINISTER FOR IMMIGRATION AND MULTICULTURAL**
 AFFAIRS
 First Respondent

ADMINISTRATIVE REVIEW TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE LEISHMAN

DATE OF ORDER: 31 JANUARY 2025

THE COURT ORDERS THAT:

1. The name of the First Respondent is amended to “Minister for Immigration and Multicultural Affairs”.
2. The name of the Second Respondent is amended to “Administrative Review Tribunal”.
3. The application filed on 17 June 2021 is dismissed.
4. The Applicant pay the costs of the First Respondent in the amount of \$5,900.

Note: The form of the order is subject to the entry in the Court’s records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE LEISHMAN

INTRODUCTION

1 On 17 June 2021, the Applicant filed an application for judicial review, pursuant to s 476 of the *Migration Act 1958* (Cth) ('the Act') in respect of a decision of the Administrative Appeals Tribunal ('the Tribunal'), as it then was.

2 The Tribunal had affirmed the decision of a delegate of the First Respondent not to grant the Applicant a Student (Class TU) (subclass 500) visa ('Student visa') under s 65 of the Act.

3 For the following reasons, the application is dismissed.

FACTUAL BACKGROUND

4 The Applicant is a citizen of India and is 29 years old.

5 The Applicant arrived in Australia in February 2019 after being granted a Visitor (Class FA) (subclass 600) visa on 27 February 2019.

6 On 8 June 2019, the Applicant applied for a Student visa.

7 On 20 August 2019, the Department of Home Affairs ('the Department') wrote to the Applicant inviting him to provide comment on adverse information the Department had received which did not support his application for a Student visa.

8 In particular, the letter which is in the Court Book ('CB') stated at CB 79:

Based on the declaration made in this application for a Student (Class TU) (Subclass 500) visa, and evidence provided by you on 8 August 2019, you were refused a visa to the United Kingdom (UK) on 24 October 2016 and Canada on 20 December 2017. You did not declare or provide any details of these refusals in your application for a Visitor (Class FA) (Subclass 600) visa.

In your application for a Visitor (class FA) (subclass 600) visa you declared residence in the United States of America from 25 October 2017 to 16 February 2019, and that you were employed by Allright Parking from 12 January 2018. With this application you provided an employment letter from 99 Institute of Beauty and Wellness stating that you worked for the business as a Hair Dresser from 1 February 2016 to 28 February 2019, the letter states the address of the business as 'Above Yes Bank, Bus Stand Road, Kapurthala, Punjab'.

With this application for a Student (Class TU) (Subclass 500) visa you have not declared any period of residence in the United States of America, or any travel to the United States of America. You have also not declared holding any employment in the

United States of America.

9 On 27 August 2019, the Applicant provided a written response to the Department and included a Form 1023 - Notification of incorrect answer(s) to the Department (CB 82–84). In his letter, the applicant stated (CB 82):

My tourist visa application subclass 600 was applied by my agent in India. I realise that he created an email ID and applied from individual account. He provided all incorrect information, which I was not aware and would like to let you know about this as I recently came to know.

10 On 3 October 2019, a delegate of the Minister refused the Applicant’s Student visa (CB97-103) on the basis that cl 500.217 in Sch 2 of the *Migration Regulations 1994* (Cth) (‘the Migration Regulations’) was not satisfied. In particular, it was found that the Applicant had given, or caused to be given, information that the delegate considered to be false or misleading in a material particular to obtain a student visa and to remain in Australia temporarily. Accordingly, the Applicant had not satisfied cl 500.212 – that he was a genuine applicant for entry and stay as a student (referred to as the Genuine Temporary Entrant criteria in the delegate’s decision). As such, the delegate was not satisfied that the Applicant had met Public Interest Criterion (‘PIC’) 4020, subclause 4020(1).

11 The delegate then went on to consider whether compelling or compassionate circumstances existed to justify the grant of the student visa but found that the Applicant had not demonstrated compassionate or compelling circumstances to allow for a waiver of the PIC 4020(1) requirement. Accordingly, cl 500.217 was not met.

12 On 3 October 2019, the Applicant applied to the Tribunal for review of the delegate’s decision.

13 On 24 March 2021, the Tribunal wrote to the Applicant’s representative inviting the Applicant to attend a hearing.

14 On 8 April 2021, the Applicant attended a hearing before the Tribunal by telephone at which he gave evidence and made submissions in support of his application. The Applicant was assisted by an interpreter in the Punjabi and English languages.

THE TRIBUNAL’S DECISION

15 The Tribunal identified that the issue before it was whether the Applicant met PIC 4020 as required by cl 500.217(1) for the grant of the Student visa.

- 16 The Tribunal set out the relevant criteria and waiver circumstances in its Statement of Decision and Reasons (CB 165-155) at [8].
- 17 The Tribunal then went on to consider whether the Applicant had given, or caused to be given a bogus document, or information that is false or misleading in a material particular.
- 18 In assessing this, the Tribunal relied upon the inconsistent information given by the Applicant in his Visitor visa and Student visa applications. At [13] of its decision (CB 166-168), the Tribunal reproduced the information upon which the delegate had based its decision.
- 19 At the Tribunal hearing, the Applicant was asked about the circumstances that led to the provision of false or misleading information (CB 168) at [15]. The Applicant did not deny false or misleading information had been provided but claimed his agent had provided it. He said he was just asked to sign the paperwork. When asked if he had checked the accuracy of the information in the documents, the Applicant said his English was “not good” at the time. The Applicant advised that another agent had completed visa applications for Canada and the UK for him.
- 20 Based on the findings of the delegate and the Applicant’s response, the Tribunal concluded that the Applicant had given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, information that is false or misleading in a material particular in relation to the application for the visa that is the subject of this review (CB 168) at [16]. Therefore, the Tribunal found that the Applicant did not meet PIC 4020(1).
- 21 The Tribunal then went on to consider whether there were compelling or compassionate reasons for the requirements of PIC 4020(1) or (2) to be waived.
- 22 The Applicant was asked during the Tribunal hearing why he believed he should be granted a Student visa in Australia (CB 168) at [21] and he reiterated his claim that his agent had submitted incorrect information that was identified by the delegate. He also said that he wants to study in Australia because he has learnt cutting (hair) and wants to have his own business when he returns to India. The Applicant also advised he likes the people and culture in Australia.
- 23 The Tribunal considered the Applicant’s evidence but was not satisfied that the Applicant had demonstrated compelling circumstances that affect the interests of Australia or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian

permanent resident or an eligible New Zealand citizen that justify the granting of the visa (CB 168) at [22].

- 24 The Tribunal therefore found that the requirements of PIC 4020(1) should not be waived and accordingly, the Applicant did not satisfy PIC 4020 for the purposes of cl 500.217(1). The Tribunal therefore affirmed the decision not to grant the Applicant a Student visa.

PROCEEDINGS IN THIS COURT

- 25 On 17 June 2021, the Applicant filed an application for judicial review of the Tribunal's decision in this Court ('the application').

- 26 The application contained two grounds of review with five particulars as follows (CB 4):

- (1) Ground One: The Tribunal failed to consider the relevant questions.

Particulars:

- (i) The Applicant in his statement claimed that his agent had provided the false information and he had just signed the papers. This at least, implied that the Applicant was victim of the wrongdoing of the agent and was unaware of the information in question. There was no material before the Tribunal contrary to this claim of the Applicant. The Tribunal erred in not making further inquiries in relation to the claim of the Applicant about the agent providing the false information. In this context, it could not be said that the applicant has given or caused to be given to the relevant assessing authority a bogus document or information that is false or misleading.
- (ii) Clause 4020(1) of the Schedule 4 to the *Migration Regulations 1994* (Cth), requires that the alleged false information must be an information that is false or misleading in a material particular in relation to a visa application. However, the Tribunal failed to consider the materiality aspect of the alleged information in relation to the application for the Student visa or the previous tourist visa held by the Applicant.
- (iii) The Tribunal failed to undertake an inquiry to address the question whether or not the decision in the previous Tourist visa was made because of the alleged false information.
- (iv) Tribunal erred in not considering that the information was not purposely untrue.

- (2) Ground Two: The Tribunal failed to discharge its review function in accordance with the law.

Particulars:

- (v) In the circumstances of the case, the Tribunal should have made further inquiries in relation to the claim of the Applicant about the agent providing the false information.

Procedural History

- 27 On 2 August 2021, Judge Neville made procedural orders permitting the Applicant to file any amended application by 25 October 2021 and a written submission, once the matter was listed for hearing, no later than 28 days before the hearing. The Applicant did not take up this opportunity.
- 28 On 5 November 2024, the parties were notified by letter and email that the matter was listed for a final hearing on 4 December 2024.
- 29 On 3 December 2024, a notice of address for service was filed notifying the Court that the Applicant had appointed a legal representative. On the same date, the Applicant's legal representative sent a medical certificate to the Court which stated that the Applicant was unfit for work or study and requested an adjournment of the hearing listed for 4 December 2024.
- 30 On 4 December 2024, the solicitor for the Applicant appeared at the hearing as did the solicitor for the First Respondent. The Applicant did not attend.
- 31 The solicitor for the Applicant made an oral application for an adjournment on the basis that she had only just been instructed and did not have enough time to prepare for and adequately represent the Applicant at the hearing. The adjournment was not opposed by the First Respondent having regard to its model litigant obligation, and was therefore granted, with the First Respondent's costs reserved to the final hearing.
- 32 The Court made further procedural orders permitting the Applicant to file any amended application, affidavit and written submissions by 3 January 2025 and listing the matter for a final hearing on 23 January 2025. The Applicant, who was now legally represented, did not file any further material in support of his application.

HEARING ON 23 JANUARY 2025

Preliminary Issue

33 At the hearing on 23 January 2025, Counsel for the Applicant sought to rely upon late and
unfiled written submissions which he tendered to the Court. Although Counsel submitted that
the submissions had been filed at the Court Registry, there was no record of this having
occurred.

34 The written submissions on behalf of the Applicant sought leave to add two further grounds
of review to those set out in the application.

35 The two further grounds of review sought to be relied upon by the Applicant were:

(3) The misconstruction of PIC 4020 by reason of the conflation of the alternative tests
applying to ‘bogus document’ and the ‘false and misleading’ alternatives, where only
the latter was relevant; and

(4) The inadequacy at law of the Tribunal’s reasons.

36 Counsel for the Applicant submitted that the amendment to the grounds relied upon was
sought because the solicitor for the Applicant had been unable to file an amended application
before the hearing.

37 When the matter was before the Court on 4 December 2024, which was the original hearing
date, the solicitor for the Applicant assured the Court when considering the adjournment
application, that she could comply with the timetabling of the filing orders which were
subsequently made on 4 December 2024.

38 Counsel for the Applicant was unable to provide a valid explanation for why the Orders of 4
December 2024 were not complied with.

39 It transpired that at some point after 3 January 2025, which was the date by which any
amended application was due to be filed, the solicitor for the Applicant determined that an
application for leave to amend the grounds of review would need to be made and that if they
were unable to file an application to amend, an oral application would be made. The solicitor
for the First Respondent advised the Court that she became aware on or around 9 January
2025 that the solicitor for the Applicant intended to make an oral application to amend the
grounds of review at the hearing on 23 January 2025, when an unfiled copy of submissions
was sent to her by the Applicant’s solicitor.

- 40 When asked by the Court why given the non-compliance with the Orders of 4 December 2024, an application for leave to amend the grounds of review had not been filed, Counsel for the Applicant advised that it had been foreshadowed with the solicitor for the First Respondent, and that it was therefore his view that it was an unnecessary waste of time, resources and costs to file something that had been made explicitly clear in the foreshadowed oral application. In Counsel for the Applicant's words, "All we would be doing is complying for a rule – for the rule's sake".
- 41 The solicitor for the First Respondent opposed the oral application to amend the further grounds of review on the basis that the proposed grounds of review lacked merit.
- 42 Pursuant to r 7.01 of the *Federal Circuit and Family Court of Australia (General Federal Law) Rules 2021* ('the Rules'), the Court has a discretion whether to grant leave to amend a document. The onus is on the party seeking leave to amend to persuade the Court that leave should be granted. In this case, as the Applicant had not complied with the orders of 4 December 2024, an application in a proceeding should have been filed pursuant to r 4.06 of the Rules.
- 43 It is the expectation of the Court that legal representatives comply with Court orders and Court rules. I formed the view from Counsel for the Applicant's submissions on this issue that it was through no fault of the Applicant that the Orders of 4 December 2024 and the relevant rules were not complied with. As such, given the importance of the matter to be determined by the Court and its significance to the Applicant, I was concerned to ensure there was no prejudice to the Applicant due to the failure of his solicitor to comply with Court Orders and Court rules.
- 44 The Court has an obligation to ensure procedural fairness to both parties. In this instance, although the solicitor for the First Respondent had not properly been put on notice in accordance with the Rules, the solicitor for the First Respondent was aware of the intention to seek leave to amend the application and had filed submissions in reply, in the event leave was granted. Although the matter did not proceed in the manner that was expected, other than the additional time and costs in preparing submissions in reply, I formed the view that there would be no prejudice to the First Respondent if leave was granted.
- 45 The power of the Court to grant or refuse leave to amend must be exercised in a way that accords with the overarching purpose of the Rules, which is to facilitate the just resolution of

disputes according to law and as quickly, inexpensively and efficiently as possible (see r 1.04 of the Rules).

46 Both parties and their legal representatives were present in Court and ready to proceed, including in respect of the amended grounds. As responsibility for the failure to comply with the Orders of 4 December 2024 and the Rules rested solely with the Applicant's legal representatives rather than the Applicant himself, I determined that in accordance with the overarching purpose of the Rules, I would grant leave to the Applicant to amend his application so the hearing could proceed and be finalised without any further delay and cost to either party.

Material Relied Upon

47 The Applicant relied upon the following:

- (b) The written submissions which were tendered and marked as Exhibit A1;
- (c) The Court Book which was tendered and marked as Exhibit A2;
- (d) The application filed on 7 June 2021; and
- (e) The affidavit of the Applicant filed on 7 June 2021.

48 Other than the amended grounds, the grounds set out in the application filed on 7 June 2021 were abandoned by the Applicant.

49 The First Respondent relied upon the following:

- (f) The Court Book which was tendered and marked as Exhibit A2;
- (g) The submitting notice filed on 7 July 2021;
- (h) The outline of submissions filed on 20 November 2024; and
- (i) The outline of submissions filed on 17 January 2025.

50 As the original grounds relied upon by the Applicant were abandoned, the First Respondent only relied upon the two amended grounds.

51 I have had regard to the material relied upon by both parties in determining this matter and the further oral submissions made at the hearing.

REQUIREMENT FOR JURISDICTIONAL ERROR

52 The Court may set aside the Tribunal's decision upon judicial review if it is affected by jurisdictional error: *Migration Act 1958* (Cth), ss 474 and 476; *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476.

53 The High Court recently explained jurisdictional error in *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 418 ALR 152 at [2] as:

...breach of an express or implied condition of a statutory conferral of decision-making authority which results in a decision made in the purported exercise of that authority lacking the legal force attributed to the exercise of that authority by statute. Though a decision affected by jurisdictional error is a decision in fact, it is "in law ... no decision at all" and is in that sense "void".

AMENDED GROUNDS OF REVIEW

Ground One

54 The nub of the first ground is that the Tribunal conflated the test which was relevant to the PIC 4020 criterion in PIC 4020(1) and treated the alternative limbs of that test as if they were one element or criterion.

55 PIC 4020 is set out in Schedule 4 of the Regulations and is as follows:

(1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the ART during the review of a reviewable migration decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

(2) The Minister is satisfied that during the period:

- (a) starting 3 years before the application was made; and
- (b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

(2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(2A) The applicant satisfies the Minister as to the applicant's identity.

(2B) The Minister is satisfied that during the period:

- (a) starting 10 years before the application was made; and
- (b) ending when the Minister makes a decision to grant or refuse to grant the visa;

neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).

(2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.

(4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

(5) In this clause:

information that is false or misleading in a material particular means information that is:

- (a) false or misleading at the time it is given; and
- (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

Note: For the definition of ***bogus document***, see subsection 5(1) of the Act.

56 The definition of information that is false or misleading in a material particular is in PIC 4020(5). The definition of bogus document is defined in s 5(1) of the Act and is as follows:

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

57 It is clear from the wording of PIC 4020(1) that a bogus document and information that is false or misleading in a material particular are alternative limbs of the test to be applied that can result in PIC 4020 being engaged.

58 The Applicant contended that the Tribunal did not differentiate between the two limbs or “tests”, as his Counsel referred to them, and dealt with them interchangeably in its decision and as though they were one criterion.

59 The Applicant submitted that the Tribunal did this by:

- (j) At paragraph 11, bringing into account the wording in s 5(1)(c) of the bogus document definition and applying it to both alternative limbs in PIC 4020(1) i.e. the requirement not to provide a bogus document or information that is false or misleading in a material particular;
- (k) At paragraph 12, by saying an element of fraud or deception by some person is necessary to attract the operation of the provision;
- (l) At paragraph 13, by only quoting from the documents and statements relied upon by the delegate in reaching its decision; and
- (m) At paragraph 16, by making a brief finding of fact only with reference to the information that is false or misleading in a material particular limb of the test and not the alternative bogus document limb.

60 As such, the Applicant contended that the failure of the Tribunal to differentiate between the two “alternatives” as Counsel referred to them, left the Applicant unable to determine the basis for its decision.

61 It was therefore submitted that the conflation of the two limbs of the test in PIC 4020(1) rendered the decision inadequate at law and thus a jurisdictional error.

62 The First Respondent contended that the Tribunal had properly identified that the issue before it was whether the Applicant met PIC 4020 as required by cl 500.217.

63 It was submitted that the Tribunal clearly differentiated the criterion in all aspects of its decision by referring to each limb of PIC 4020(1) and by defining information that is false or misleading in a material particular and bogus document.

64 It was further contended that the Tribunal expressly put to the Applicant the existence of false or misleading information in the context of his visa application, and expressly made findings that the Applicant had given, or caused to be given, information which is false or misleading.

65 As such, it was contended by the First Respondent that it was clear from the Tribunal’s decision at [16]-[17] (CB 15) that it concluded that PIC 4020 was engaged due to the

provision of information that was false or misleading in a material particular. Further, there was no reference made to the provision of a bogus document.

66 The First Respondent submitted that the absence of express findings by the Tribunal in respect of whether a bogus document had been given by the Applicant is not a conflation of the PIC 4020 test, nor does it demonstrate a misunderstanding or misapplication of the relevant test.

67 It was further submitted by the First Respondent that PIC 4020 requires that only one element of the test be fulfilled for PIC 4020 to be engaged and that the Tribunal determined, based on the undisputed evidence and claims of the Applicant, that the requirements at PIC 4020(1) were properly engaged.

Consideration

68 It is clear from the Tribunal's decision at [8], [10] and [11] (CB 166) that the Tribunal understood that bogus document and false or misleading in a material particular are separate limbs of the test in PIC 4020(1). At [10], the Tribunal referred to the definitions of the terms bogus document and false or misleading in a material particular.

69 Further, the Tribunal differentiated between the definition of information that is false or misleading in a material particular in PIC 4020(5) and the reference in the definition of bogus document to a document that was obtained because of a false or misleading statement.

70 At [11] of its decision (CB 166), when referring to the requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, the Tribunal stated that the requirement in PIC 4020(1) applies:

whether or not the document or information was provided by the applicant knowingly or unwittingly.

71 It was the contention of the Applicant that this demonstrated that the Tribunal had conflated the two alternatives of the PIC 4020(1) test, as the wording 'a false or misleading statement, whether or not made knowingly', is contained within the definition of 'bogus document' only.

72 Further, at [12] of its decision the Tribunal said (CB 168):

While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

73 The Applicant contended that this aspect of the decision was a further demonstration that the Tribunal had conflated the two limbs of PIC 4020(1), particularly as the case of *Trivedi v MIBP* [2014] FCAFC 42 is a ‘bogus document’ case.

74 In *Singh v Minister for Border Protection* [2018] FCAFC 52 the Full Court stated at [144(4)]:

Where an issue of the proper construction or application of PIC 4020 is raised, *Trivedi* and *Patel* authoritatively state that where a visa applicant has given or caused to be given to a relevant decision-maker a document which is a “bogus document” as defined, or information that is false or misleading in a material particular as defined, to determine whether PIC 4020 is satisfied or not, it is not necessary to show knowing complicity by the visa applicant as long as the material is purposely untrue.

75 It is clear by its reference to the words ‘knowingly or unwittingly’ that the Tribunal is clarifying that for PIC 4020 to be engaged, it is not necessary to show knowing complicity by the Applicant in its provision of either a ‘bogus document’ or information that is false or misleading in a material particular.

76 It is also clear from the Tribunal’s comments in [12] of its decision (CB 168), that it understood and is clarifying that for information to be ‘false’ in the sense of purposely untrue, there needed to be some element of fraud or deception by someone for PIC 4020 to be engaged.

77 The Tribunal expressly put to the Applicant that his visa application contained false or misleading information, and he did not deny false or misleading information had been provided, but claimed his agent had provided the information. The Applicant acknowledged that he signed the application and when questioned by the Tribunal as to whether he had checked the accuracy of the information in the documents, the Applicant simply said his English was “not good” at the time (CB 168).

78 The Tribunal expressly put to the Applicant the existence of false or misleading information in the context of his visa application, invited his response, and expressly made findings that the Applicant had given, or caused to be given, information which is false or misleading at [15] and [16] (CB 168). No reference was made to the provision of a bogus document by the Applicant.

79 This makes it clear that the Tribunal did differentiate between the two alternative limbs in PIC 4020(1) and that it was the provision of false or misleading information in a material particular, that led it to conclude that PIC 4020 was engaged.

80 Accordingly, I find that the Tribunal applied the correct test for whether PIC 4020 was engaged. Ground one is not made out and no other jurisdictional error is demonstrated.

Ground Two

81 The Applicant contends that the Tribunal's reasons were inadequate and sought an alternative order that the Tribunal's decision be remitted to the Tribunal for an adequate statement of reasons.

82 It was contended by the Applicant that the Tribunal had misunderstood the legislation by conflating the two alternative limbs, in PIC 4020 which thus rendered its statement of reasons inadequate at law.

Consideration

83 I have already determined in my consideration of ground one that the Tribunal clearly differentiated between the two alternative limbs of the PIC 4020(1) test, and I have outlined the process and reasoning by which the Tribunal reached its decision. Accordingly, I find that ground two is not made out and no other jurisdictional error is demonstrated.

CONCLUSION

84 The Court's role is to determine whether or not there is a jurisdictional error in the Tribunal's decision. Since the Court is not persuaded that there is a jurisdictional error in the Tribunal's decision, the application is dismissed.

COSTS

85 At the conclusion of the hearing, I invited submissions from the parties on costs. Neither party objected to the principle that costs should follow the event. The First Respondent sought costs in the amount of \$5,900. This amount, which is below scale costs, appears reasonable, noting that the original hearing date was adjourned. The Applicant did not object to this amount. I am satisfied the Applicant should pay the First Respondent's costs in this amount.

I certify that the preceding eighty-five (85) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Leishman.

Dated: 31 January 2025

